IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 123 OF 2005

Vaibhav Sambugir Gosavi .. Applicant

Vs.

The Special Land Acquisition Officer No.3, Solapur and anr. .. Respondents

WITH

CIVIL REVISION APPLICATION NO. 124 OF 2005

Avinashgir Vishweshwargir Gosavi D/H. and ors. .. Applicants

Vs.

The Special Land Acquisition Officer No.3, Solapur and anr. .. Respondents

WITH

CIVIL REVISION APPLICATION NO. 125 OF 2005

Mrs. Chandrakala Rameshgir Gosavi and anr. .. Applicants

Vs.

The Special Land Acquisition Officer No.3, Solapur and anr. .. Respondents

WITH

CIVIL REVISION APPLICATION NO. 126 OF 2005

Surehgir Bisweshwargir Gosavi .. Applicant

Vs.

The Special Land Acquisition
Officer No.3, Solapur and anr. .. Respondents

Mr. Amit M. Shete for the applicants.
Ms. Geeta Mulekar, AGP for Respondents-State.

CORAM: B.H. MARLAPALLE, J.

Date : October 13, 2005.

P.C.:

1. Heard Mr. Shete the learned counsel for the applicants and Ms. Mulekar, the learned AGP for the respondents-State Authorities.

2. All the applicants had approached the Collector/Special Land Acquisition Officer with an application under Section 18(1) of the Land Acquisition Act, 1894 for making a Reference to the court and the said applications have been rejected solely on the ground that the applicants have not affixed the court fee stamp to the Reference. Hence these revision applications are being decided by this common judgment.

3. Rule. Respondents waive service. Rule is

taken up for final hearing forthwith.

4. In the case of Kashiram Namdeo Zambro vs. State of Maharashtra reported in **(1996) 1 SCC 289**, the Supreme Court, in para 2, had observed thus:-

> "2. The only question that arises for consideration is whether the claimant is required to pay court fee on an application seeking reference under Section 18. We are at a loss to understand that a claimant is required to pay ad valorem court fee on an amount awarded by the Collector under Section 11 for seeking reference under Section 18. What is required is to make a written application with particulars envisaged under Section 18(2) of the Act, to the Collector requiring the matter to be referred to the civil court to decide his objection regarding measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of the compensation awarded to the persons interested. The Act is a self-contained Code and it does not speak of payment of any court fee. It requires only that the application should be made within the limitation prescribed either in clause (a) or (b) of sub-section (2) of the Act. It is, therefore, clear that non-payment of the deficit court fee, though wrongly made by the appellant, is not necessary. The owner or person interested is not enjoined under law to pay any court fee on the application made under Section 18(1) seeking reference for determination of the compensation by the civil court etc. The

> civil court and the High Court, therefore, have committed grave error of law in rejecting the claim of the appellant for determination of the compensation."

5. However, the Government of Maharashtra sought clarification of the said decision by filing Interim Application No.1 in Civil Appeal No.3604 of 1982 and while disposing of the said application the Apex Court clarified thus:-

> "The aforesaid judgment in Civil Appeal No.3604 of 1982 shall not be construed to mean that it overrides the effect of Article 15 of Schedule-I of the Bombay Court Fees Act, 1959 in cases were that provision applies."

6. A Division Bench of this court in the case of Sambhaji Manaji Chate and anr. Vs. State of Maharashtra and anr. reported in **2003 (2) Mh.L.J. 661** considered the issue of payment of court fees or deficit court fees in case of an application submitted under Section 18 of the Land Acquisition Act and the consequences thereto and observed in para 10 as under:-

> "In view of the clarification given by the Apex Court, it is clear that the person preferring the application under Section 18 of the Land Acquisition Act is required to pay the court fees. However, this amount could be remitted/deposited even before the Reference Court and, therefore, it is appropriate for the S.L.A.O. to pass a conditional order on the application for Reference preferred by the petitioners and to forward it to the Civil Court."

6A. Payment of court fees, though required to be made, in case of an application submitted under Section 18 of the Land Acquisition Act, it is not a condition precedent and the deficiency can be corrected at a later date either by remitting the court fees amount with the S.L.A.O. or to the court to which the Reference has been made. In view of the law laid down by this court in the case of Sambhaji Chate (Supra), the outright rejection of the applications submitted by the applicants by the impugned orders is unsustainable and it is necessary that the applicants are given time to remove the deficiencies. The S.L.A.O. will have to, therefore, consider the applications submitted by the applicants

in keeping with the law laid down by this court in Sambhaji Chate's case afresh.

7. Hence the revision applications succeed and they are hereby allowed. The impugned orders in each of the applications are hereby quashed and set aside and the applications are restored to the file of the Special Land Acquisition Officer who shall pass fresh orders of Reference by setting out a period to pay the court fees or deficit court fees either to him or to be remitted to the Reference Court within a fixed period. The applications to be decided on remand within a period of six weeks from today. Rule made absolute accordingly with no order as to costs.

(B.H. Marlapalle,J.)